

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

DOCKET NO. 2004-316-C

In re:)
)
Petition to Establish Generic Docket to)
Consider Amendments to Interconnection)
Agreements Resulting from Changes of)
Law)

**US LEC OF SOUTH CAROLINA INC.'S
COMMENTS ON BELL SOUTH TELECOMMUNICATION, INC.'S
MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE,
MOTION FOR DECLARATORY RULING**

US LEC of South Carolina Inc. ("US LEC") submits this response to BellSouth Telecommunications, Inc.'s Motion for Summary Judgment, or in the Alternative, Motion for Declaratory Ruling ("Motions") filed with the Commission on or about June 20, 2005, and respectfully requests that the Commission deny BellSouth's Motions to the extent requested below.

Although US LEC agrees that certain of the issues identified in the Joint Issues Matrix filed with the Commission in this proceeding on June 29, 2005, may not require significant testimony or factual information for the Commission to make a decision, and that, in large part, the Commission's decision may be made on legal briefing, the parties arrived at an agreed-upon procedural schedule that will permit all parties to ultimately offer factual testimony on, and brief all, the issues. BellSouth's Motions would effectively short-circuit the process that the parties agreed upon to resolve the disputed issues in this proceeding and would eliminate the opportunity of each party to present its

comprehensive position to the Commission. In addition, the possibility of a piecemeal adjudication of the issues could lead to reconsideration petitions and/or appeals that would unduly complicate and potentially delay the resolution of the remaining issues.

In US LEC's case, it has already negotiated and executed an amendment to its interconnection agreement with BellSouth to implement the determinations of the *Triennial Review Order*.¹ Consequently, a number of the issues that BellSouth seeks summary judgment or declaratory ruling are not ones that US LEC intends to present evidence on, or to brief, as the only issues that are "active" between BellSouth and US LEC are related to an amendment to implement the provisions of the *Triennial Review Remand Order* ("TRRO").²

For the most part, the negotiations between US LEC and BellSouth to amend the interconnection agreement and implement the TRRO have not been hampered by legal issues. Instead the disputes are more operational and/or factual issues that the FCC did not address in the TRRO. Generally, US LEC does not believe that a decision on which party has the better interpretation of TRO or TRRO prior to the submission of testimony or prior to the hearing will eliminate the need to address the legal matters as applied to the factual issues. US LEC believes that (a) direct and rebuttal testimony should be limited to factual matters and (b) legal arguments should be addressed in the briefs

¹ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order*" or "TRO").

² Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of Section 251 unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, 18 FCC Rcd 16978 (2003) ("TRRO"), corrected by Errata, 18 FCC Rcd 19020 (2003) ("*Errata*").

submitted by the parties, including any legal arguments in response of those set forth in BellSouth's Motions. US LEC sees no benefit to the Commission in addressing the BellSouth Motions at this time, and that holding the Motions in abeyance until the testimony, hearing and briefings as contemplated by the procedural schedule is completed is more efficient use of the Commission's resources.

By offering these comments, without addressing each of BellSouth's legal arguments, US LEC is not waiving its objections or disagreement with any of the legal arguments included in the BellSouth Motions and reserves the right to address these and other legal arguments that BellSouth at a later date if necessary.

Dated: July 18, 2005

Respectfully submitted,

US LEC OF SOUTH CAROLINA INC.

By:



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STATE OF SOUTH CAROLINA
BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 2004-316-C

In the Matter of:)

)
Generic Proceeding to Consider)
Amendments To Interconnection)
Agreements Between BellSouth)
Telecommunications, Inc. and)
Competing Local Providers Due to)
Change of Law)
_____)

CERTIFICATE OF SERVICE

This is to certify that I, Mary F. Cutler, a Legal Assistant with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the persons named below the **Comments on BellSouth's Motion for Summary Judgment, or in the Alternative, Motion for Declaratory Ruling** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

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Dated at Columbia, South Carolina this 18th day of July 2005.


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